

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Zeferino Gutierrez-Ayala,

Defendant.

**MEMORANDUM OPINION
AND ORDER**

Criminal No. 09-49(1) ADM/HB

LeeAnn K. Bell, Assistant United States Attorney, Minneapolis, MN, on behalf of Plaintiff.

Zeferino Gutierrez-Ayala, pro se.

I. INTRODUCTION

This matter is before the undersigned United States District Judge for a ruling on Defendant Zeferino Gutierrez-Ayala's ("Gutierrez-Ayala") Motion for Reduction of Sentence Pursuant to Section 404 of the First Step Act of 2018 [Docket No. 394]. For the reasons set forth below Gutierrez-Ayala's Motion is denied.

II. BACKGROUND

In March 2009, Gutierrez-Ayala and 10 co-defendants were charged in a 14-count superseding indictment with trafficking methamphetamine and powder cocaine. Superseding Indictment [Docket No. 57]. Gutierrez-Ayala was charged in Count 1 with conspiracy to distribute at least 1,500 grams but less than 5,000 grams of a mixture or substance containing a detectable amount of methamphetamine, and at least 500 grams but less than 2,000 grams of cocaine hydrochloride (powder cocaine), in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846.

On July 15, 2009, Gutierrez-Ayala entered a plea of guilty to the conspiracy charge in

Count 1. Plea Agreement [Docket No. 97]. He has been sentenced to a prison term of 168 months. See Order Granting Mot. Reduce Sentence [Docket No. 347] at 1.

Gutierrez-Ayala now moves for a sentence reduction under § 404 of the First Step Act. The Government opposes the motion, arguing Gutierrez-Ayala is not eligible for a sentence reduction because he was not sentenced for a “covered offense” under § 404 of the First Step Act.

III. DISCUSSION

In 2010, Congress enacted the Fair Sentencing Act, which reduced the sentencing disparities between individuals convicted of cocaine base (crack cocaine) crimes and those convicted of powder cocaine crimes. United States v. McDonald, 944 F.3d 769, 771 (8th Cir. 2019) (citing Dorsey v. United States, 567 U.S. 260, 269 (2012); Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372). Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine required to trigger mandatory minimum sentences under 21 U.S.C. § 841(b)(1) by raising the threshold for the 5-year minimum from 5 grams to 28 grams, and by raising the threshold for the 10-year minimum from 50 grams to 280 grams. Id. Section 3 of the Act eliminated the 5-year mandatory minimum for simple possession of crack cocaine. Id.

In 2018, Congress enacted the First Step Act, which makes Sections 2 and 3 of the Fair Sentencing Act retroactive. Section 404(b) of the First Step Act provides:

A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed.

Pub. L. No. 115-391, 132 Stat. 5194. The First Step Act defines a “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act . . . , that was committed before August 3, 2010.” First Step Act § 404(a).

Gutierrez-Ayala’s conviction is not a “covered offense” under § 404 of the First Step Act. Gutierrez-Ayala’s violation was based on powder cocaine and methamphetamine, not on crack cocaine. Section 2 or 3 of the Fair Sentencing Act did not modify the statutory penalty for Gutierrez-Ayala’s offense. As a result, Gutierrez-Ayala is not eligible for a sentence reduction under § 404 of the First Step Act.

IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant Defendant Zeferino Gutierrez-Ayala’s Motion for Reduction of Sentence Pursuant to Section 404 of the First Step Act of 2018 [Docket No. 394] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT COURT

Dated: May 21, 2020